IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2002

CORAM

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

CIVIL REVISION PETITION No.973 OF 2001
AND
C.M.P.Nos.5271 OF 2001 and
12049 OF 2002

1. Mrs. Vera Marie Vas

2. Mrs.Dulcie Alice Mudnanni Nee Vas .. Petitioners

-Vs-

1. Mrs. Joyce Primrose Preston Nee Vas

2. Dr.Irwin Vas

3. Mr.Sydney Noronha

4. Mrs.Wendy Noronha .. Respondents

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and executable order passed in I.A.No.1251 of 19 97 in O.S.No.147 of 1997 on the file of Sub-Court, Udhagamandalam, dated 10.11.2000.

!For petitioners : Mr.A.U.Ilango

^For respondents : Mr.M.Rajaraman
for R1 and R2.
No appearance for R3 and R4.

:ORDER

Defendants 1 and 2 in O.S.No.147 of 1997 on the file of Subordinate Judge, Udhagamandalam have filed the present revision against the order passed in I.A.No.1251 of 1997.
2. When the revision was pending, the second petitioner in the revision died leaving the first petitioner and respondents 1 and 2 as her surviving heirs.
3. The first respondent filed a suit for partition in April, 1997 against the petitioners and second respondent herein seeking partition of her

1/4th share in the suit properties. The petitioners herein filed written statement in September, 1997.
4. The plaintiff filed application under Order VIII Rule 9 C.P.C read with Section 151 C.P.C seeking leave of the court to file subsequent pleadings by stating that the averments in the written statement are contrary to facts and there is need to clarify the position by filing subsequent pleadings. The defendants 1 and 2 filed counter statement contending that Order VIII Rule 9 C.P.C is intended for the defendants and the application filed under that provision by the plaintiff is misconceived and unsustainable. The learned Subordinate Judge granted leave holding that the application is maintainable. The same is challenged in this revision petition.
5. Heard the learned counsel for the petitioner and the respondents.
6. The application filed by the plaintiff under Order VIII Rule 9 C.P.C is opposed on the ground that it is not maintainable under that provision. Order VI Rule 1 of Civil Procedure Code defines "pleading". It states that "Pleading" shall mean plaint or written statement. Order VIII Rule 9 of Code of Civil Procedure provides for subsequent pleadings. It reads "9. Subsequent pleadings:- No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off (or counter-claim) shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same."

After the filing of the written statement by the defendant, no pleading can be presented except by the leave of the Court with one exception, namely, if in the written statement, the defendant sets out a counter claim or claims a set-off, the plaintiff has got a right of reply to the written statement, for which, no leave is required. It is also open to the Court to grant leave to the defendant to file additional written statement if it is sought for. In other words, the leave of the Court has to be obtained for presenting rejoinder or additional written statement as the case may be as per the above provision.
7. The learned counsel for the petitioner contended that pleadings cannot be filed piecemeal and the party who seeks leave has to explain as to why the contention was not raised in the earlier pleadings and relied on the following decisions of this Court.
" 1) H.Ramachandra Rao v. A.Mohideen (2000-1-L.W. 420).
2) Poongavanam Ammal v. Navaneetham Ammal (2000-1- L.W. 821)."

8. S.S.Subramani, J., while considering the applications seeking for leave to file additional written statement in the cases in which the above decisions arose, held that the additional pleadings cannot be presented as of right and the leave of the court has to be obtained and it has to be explained by the party who seeks leave as to why this contention was not raised in the earlier pleadings and while exercising discretion, the court has to consider the conduct of the party, stage of the litigation, delay if any, any hardship likely to be caused to the opposite party and concluded that the applications were rightly rejected by the trial Court in those cases since they were filed belatedly and after commencement of trial.

9. In the present case, the written statement was filed in September, 1997 and the application seeking for leave to file subsequent pleadings was filed on 26.11.1997 and hence there is no delay on the part of the plaintiff. The trial has not commenced yet and there is no likelihood of any hardship to the opposite party.

10. A Division Bench of this Court in Veerasekhara Varmarayar v. Amirthavalliammal and others (AIR 1975 MADRAS 51) has held that the law does not compel the plaintiff to file a rejoinder challenging the allegations made in the written statement and the failure to file a rejoinder cannot be treated as an admission of the plea in the written statement.

11. The learned counsel for the respondents contended that under Order VIII Rule 9 C.P.C, the plaintiff can file a reply to the written statement after obtaining the leave of the court and he relied on the decision of the Karnataka High Court in Mohammed Abdul Gafoor and others v. Peddappayachari and another (ILR 1980 (1) Karnataka 247). He also cited another decision of the same High Court, reported in 197 3 (1) Mysore Law Journal Short Notes-2.

12. In the above decisions, the Karnataka High Court has held that the plaintiff has got a right of reply to the written statement if in the written statement the defendant sets out a counter claim or claims a set off and in other cases, the plaintiff has to seek and take the permission of the court to file an additional statement. I am in agreement with the view expressed by the Karnataka High Court in the above decisions.

13. As already seen, the plaintiff filed the application seeking for leave at the earliest point of time by stating that the averments made in the written statement are contrary to the facts and there is need to clarify the position by filing subsequent pleadings and the trial Court has granted the leave sought for. The discretion has been exercised properly by the trial Court applying judicial mind and the order does not warrant any interference

under Section 115 C.P.C.1

14. In the result, the civil revision petition is dismissed. No costs. Connected C.M.P.Nos.5271 of 2001 and 12049 of 2002 are also dismissed.

4.10.2002
Index: yes.
Internet: yes.

To
1. The Subordinate Judge,
Udhagamandalam.

C.NAGAPPAN, J.

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